

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

AUG 29 2005

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY SS DEPUTY

KENNETH VENABLE,

Petitioner,

vs.

MARTY SIRMONS, Warden,

Respondent.

No. CIV-05-663-W

ORDER

On August 9, 2005, United States Magistrate Judge Gary M. Purcell issued a Report and Recommendation in this matter and recommended that the Motion to Dismiss Petition for Habeas Corpus filed by respondent Marty Sirmons, Warden, be granted and that the Petition for Writ of Habeas Corpus ("Petition") filed by petitioner Kenneth Venable be dismissed as untimely. Venable was advised of his right to object, and he has timely filed his Objection to the Report and Recommendation.

Upon de novo review of the record, the Court concurs with Magistrate Judge Purcell's suggested disposition of this matter. Venable's Petition is subject to the one-year statute of limitations established by the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2244(d)(1), for the filing of federal habeas petitions. Because the one-year period in this case expired in July 2000, Venable's Petition filed in 2005 is time-barred unless Venable can establish that this limitations period has been tolled. The Court finds Venable not only has failed to demonstrate that he is entitled to statutory tolling under title 28, section 2244(d)(2) of the United States Code, but also has failed to demonstrate that extraordinary circumstances warrant equitable tolling in this instance.

Accordingly, the Court

- (1) ADOPTS the Report and Recommendation issued on August 9, 2005;
- (2) GRANTS Sirmons' Motion to Dismiss Petition for Habeas Corpus filed on July 1, 2005; and
- (3) DISMISSES Venable's Petition as untimely.

ENTERED this 29th day of August, 2005.


LEE R. WEST
UNITED STATES DISTRICT JUDGE